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RESPONSE

In response to the Office Action dated July 8, 2004, Assignee respectfully requests reconsideration based on the following remarks. Assignee respectfully submits that all pending claims are in condition for allowance.

The United States Patent and Trademark Office (the "Office") objected to the length of the Abstract, responded to the Preliminary Amendment, rejected claims 1-17 and 20 under 35 U.S.C. § 103(a) as being unpatentable over *McMullan, Jr.* (U.S. Patent No. 5,251,324) and *Kiewit et al.* (U.S. Patent No. 4,697,209), rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over *McMullan, Jr.* and *Kiewit et al.* and further in view of *Faust et al.* (U.S. Patent No. 5,752,159), and rejected claims 19 and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over *McMullan, Jr.* in view of *Kiewit et al.* and further in view of *Faust et al.* and further in view of *Russo* (U.S. Patent No. 5,619,247). The Assignee shows, however, that the pending claims are not fully disclosed in the cited references nor are the pending claims anticipated, nor obviated, by the cited references. Thus, the Assignee respectively submits that the pending claims are ready for allowance.

Specification Objection:

In this Amendment and Response, Assignee (1) deletes the prior Abstract and (2) submits a new Abstract that does not exceed the maximum word length of 150 words. Consequently, Examiner Ustaris' objection has been overcome, and Assignee respectfully requests the Examiner Ustaris remove the objection.

Response to Preliminary Amendment:

In the Office Action mailed on July 8, 2004 (hereinafter referred to as "Office Action"), Examiner Ustaris pointed out that the Preliminary Amendment stated that the affidavits of Edward Rowland Grauch, John Stefanik, and Scott Swix were established for claims 1-7.

However, the affidavits are established for claims 1-23, and, therefore, the conception date of August 18, 1995 applies to claims 1-23.

§103 Rejection:

The Office rejected claims 1-17 and 20 under 35 U.S.C. § 103(a) as being unpatentable over *McMullan, Jr.* (U.S. Patent No. 5,251,324) and *Kiewit et al.* (U.S. Patent No. 4,697,209), rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over *McMullan, Jr.* and *Kiewit et al.* and further in view of *Faust et al.* (U.S. Patent No. 5,752,159), and rejected claims 19 and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over *McMullan, Jr.* in view of *Kiewit et al.* and further in view of *Faust et al.* and further in view of *Russo* (U.S. Patent No. 5,619,247).

If the Office wishes to establish a *prima facia* case of obviousness, three criteria must be met: 1) combining prior art requires "some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill"; 2) there must be a reasonable expectation of success; and 3) all the claimed limitations must be taught or suggested by the prior art. DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2143 (orig. 8th Edition) (hereinafter "M.P.E.P."). As the Assignee shows, however, the combination of *McMullan, Kiewit, Faust,* and/or *Russo* wholly fails teach or suggest the invention(s) as claimed in claims 1-23 and in new claim 24. The Assignee, then, respectfully requests allowance of the pending claims (claims 1-24).

Independent claims 1, 8, 16, and 20 disclose methods and systems for collecting, processing, merging, and/or analyzing selected subscriber commands and/or programming content communicated over a media delivery network. *See* independent claims 1, 8, 16, and 20. Each of these independent claims is presented below.

> [c01] (Original)   A method for collecting information about viewing habits of subscribers to a media delivery network for delivering programming to numerous set top boxes, each capable of supporting different applications invoked and controlled by subscriber commands, the method comprising the steps of:

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a) *programming each application to identify selected subscriber commands of interest;*

b) *determining an application identifier corresponding to a particular application to which a selected command is addressed;* and

c) creating an *event record* comprising:

    1) *the application identifier;*

    2) *an identification code corresponding to the selected command;* and

    3) *a time stamp.*

[c08] (Original)   A system for collecting and processing information about subscribers' selection and use of programming distributed over a media delivery network, the system comprising:

a) merge processor coupled via means for communication to

b) a plurality of set top boxes, each comprising a processor for

    (1) *collecting a plurality of event records that describe selected commands from a subscriber to a particular set top box* and

    (2) *transmitting event records to the merge processor;*

c) wherein *the merge processor forms an event timeline describing a subscriber's selection of distributed programming for a discrete time period by merging the event records with programming data describing programming available via the media delivery system.*

[c16] (Original)   A method for journaling information about subscriber use of a media delivery network for delivering programming and a merge processor for analyzing the resulting journaled information, the method comprising the steps of:

a) collecting information about a plurality of subscribers' use of a media delivery network, the collecting step comprising:

    i) *identifying commands of interest from each subscriber;*

ii) *forming event records that record at least the commands*

of interest and a time associated with the command;

b) *transmitting event records to the merge processor*;

c) *merging the event records with data describing the programming delivered over the media network in order to form event timelines of which describes the programming selected by a particular subscriber over a discrete time period.*

[c20] **(Original)**   A system for determining the viewing habits of subscribers to a media delivery network for delivering programming, the system comprising:

a) a collector for collecting event records describing subscribers' selection and use of programming;

b) means, coupled to the collector, for communicating event records to

c) *a merge processor for processing the event records to form a selected subscriber an event timeline describing the programming delivered to a selected subscriber over a particular time period via the media delivery network*;

d) *means for storing demographics information about selected groups of subscribers*; and

e) *wherein the merge processor forms a plurality of event timelines and correlates the demographics information with the event timelines.*

U.S. Patent Application No. 09/496,825, claims 1, 8, 16, and 20 (emphasis added by Assignee).

McMullan and/or *Kiewit* do not mention nor do they suggest these claim elements. Rather, *McMullan* describes systems and methods ". . . for generating and recovering viewing statistics from a plurality of remote terminals in *a cable television system*, and more particularly to a method and apparatus for remotely programming remote terminals to *monitor and record viewing statistics* at *specific times* and *returning this data to a system manager in a timely manner to be accumulated and processed*." U.S. Patent No. 5,251,324, col. 1, lines 29-36

(emphasis added by Assignee). And, *Kiewit* describes "... method and apparatus for identifying programs such as television programs received from various sources detects the occurrence of predetermined events such as scene changes in a video signal and extracts a signature from the video signal. The signatures and the times of the occurrence of the signatures are stored and subsequently compared with reference signatures to identify the program. The signatures may be compared in pairs to increase resolution, and the time interval between events or signatures may also be used to identify the program, either by themselves or in conjunction with the signatures." U.S. Patent No. 4,697,209, Abstract. *McMullan* and/or *Kiewit*, however, fail to even remotely describe or suggest the claimed invention of independent claims 1, 8, 16 and 20, and consequently, corresponding dependent claims 2-7, 9-15, 17-19, and 2-23.

Regarding claim 1, Examiner Ustaris asserts that:

> .... The cable television distribution system also has the capability of generating and collecting viewing statistics of "information about viewing habits" of the subscribers using the STTs (See column 23 line 65 – column 24, line 17). *Inherently, each application within the STT would be programmed to "identify selected subscriber commands of interests", i.e., when the user issues a command to buy a PPV program the IPPV application would recognize or "to identify" that command* (See column 2, lines 1-16). The STT includes non-volatile memory (NVM) where it stores an Event/Viewing Statistic Reply that contains event records of the STT or "creating an event record", i.e., channels which were tuned by the STT and IPPV purchase data of the subscriber (See column 24 line 62 – column 25 line 6). *Inherently, when storing records within the Event/Viewing statistic Reply an "application identifier corresponding to a particular application" is used to label the event, i.e. IPPV purchase or viewing channel* (See Fig. 16, View Channel A-D and column 5 lines 49-60). The Event/Viewing statistic Reply include the "applications identifier" and *a time code or "time stamp" of when the event was recorded* (See column 5 line 65 – column 6 line 5). However, McMullen does not disclose that the Event/Viewing statistic Reply contains an "identification code corresponding to the selected command.".
>
> Kiewit et al. (Kiewit) discloses a system for determining the viewing habits of subscribers. The system is able to record the mode in which the subscriber is using the system. *The mode or "identification code" list numbers that correspond to certain subscriber operations or "corresponding to the selected command", i.e., VCR playback = 4.2, VCR Rewind = 4.4* (See Fig. 3 and column 6 lines 15-34). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to modify the Event/Viewing statistic Reply disclosed in McMullan to use mode codes or "identification code" that corresponds to the subscriber's operations/commands,

as taught by Kiewit, in order to provide an easy and universal system to identify certain operations thereby making it easier for the system to generate statistics of the subscribers actions.

Office Action mailed on July 8, 2004 (hereinafter referred to as the "Office Action"), pp. 3-4 (emphasis added by Assignee).

However, *McMullan* and/or *Kiewit* fail to disclose or suggest (1) programming each application to identify selected subscriber commands of interest, (2) determining an application identifier corresponding to a particular application to which a selected command is addressed, and (3) creating an event record including (a) the application identifier, (b) an identification code corresponding to the selected command, and (3) a time stamp. *See* U.S. Patent Application No. 09.496,825, claim 1.

Rather, *McMullen* describes the following:

> The present invention permits each set-top terminal to generate and the system manager to collect viewing statistics at predetermined times. The viewing statistics generated and collected could comprise a variety of data which could be measured by the set-top terminal, such as viewer profile data or television status data. Viewer profile data includes such information as who in a household is watching a particular television program, the age of that person, the sex of that person, etc. Television status data includes such information as the television channel being viewed at any particular time, the sound volume level of a channel being viewed, the luminance of the television channel, etc. In one embodiment of the present invention, the television channel being viewed by one or more subscribers is the particular viewing statistic being generated and collected. The process of generating and collecting this type of viewing statistic will be discussed in detail below. The apparatus and methods of generating and collecting other types of viewing statistics will naturally closely resemble those of this embodiment.

U.S. Patent No. 5,251,324, column 23 line 65 – column 24, line 17.

> The concept of Impulse Pay Per View (IPPV) is well understood in the art, but is described briefly here for completeness. Essentially it is a sales method by which a pay (cable) television subscriber may purchase specific program events on an individual basis. Furthermore, the purchase may be contracted on an "impulse" basis solely by interacting with the subscriber's in-home set-top terminal (STT). Although it is not a requirement that the event being purchased be "in progress", it is a requirement that the system support the purchase of events

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that are in progress. The purchase must be handled in a manner that does not incur any appreciable delay in the subscriber's ability to view the event immediately (i.e. instant gratification).

Id., column 2, lines 1-16.

> As discussed below, this viewing statistics data is included in an Event/Viewing Statistics Reply transmitted upstream to the system manager. For example, this reply includes information related to the number of bytes in the message, the type of message, the STT digital address, the recording times and channels which were tuned by the STTs at those recording times, and any IPPV purchase data. However, the contents of this reply is not limited to this data, but may also comprise in another embodiment data representing other viewing statistics relating to the particular viewers watching television programs or data corresponding to the status of the television set itself.

Id., column 24, lines 62 – column 25 line 6.

> Each remote terminal has at least one collection slot consisting of a record time storage location, a viewing statistics storage location, and a time code storage location for storing a record time, viewing statistics information, and additional information corresponding to the time at which the viewing statistics were generated, respectively. In a preferred embodiment, the television channel being viewed is the designated viewing statistic being collected, and therefore the above-mentioned viewing statistic storage location would correspond to a channel storage location. However, the viewing statistic storage location could just as easily be a sound volume storage location, a remote terminal power on/off indicator storage location, or any other designation corresponding to data relating to the viewers watching the television set (Viewer profile data) or data relating to the status of the television set itself (Television status data).

Id., column 5, lines 42 – 60.

> The record time consists of information sent downstream from the system manager to each set-top terminal corresponding to some future time at which each set-top terminal is to store the particular viewing statistics status. More particularly, the record time is stored in the record time storage location, and when the record time equals the current real time, the status of the remote terminal corresponding to the particular viewing statistics type being recorded, is stored in the viewing statistics storage location and a time code representing the current time is stored in the time code storage location. For example, in the preferred embodiment where the current channel being viewed is being stored and collected, the channel being viewed is stored in the viewing statistics storage location (in this case referred to as the channel storage location) and a time code is stored in the time code storage location when the record time equals the current real time.

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After the viewing statistic, such as the channel in the preferred embodiment, and the time code are stored in the appropriate storage locations at the remote terminal, the contents of these storage locations are transmitted upstream to the system manager either automatically, or in response to a polling signal. The system manager determines which particular collection slot is being returned by comparing the time code returned to a list of record times originally sent downstream to each set-top terminal. By doing so, the system manager is able to verify which collection slot has been returned by each set-top terminal, and is able to compile viewing statistics for the entire set-top terminal population.

Also in accordance with the present invention, a method for generating and collecting viewing statistics is provided consisting of the above-described steps and additional steps. As described before, the record time is stored in the record time storage location, and once the record time is equal to the current real time, the appropriate viewing statistic and the time code are stored in the channel storage location and time code storage location. However, unlike the situation where the system manager sends all of the record times for the various collection slots downstream at once, the present invention allows for the system manager to send a record time downstream for any collection slot at any time. Thus, while the system manager is programming one collection slot to record a channel at a future time, the system manager can be receiving the viewing statistic information and time code of another collection slot transmitted from the same or another set-top terminal.

Id., column 5, line 61 – column 6 line 42.

Consequently, Examiner Ustaris' assertion that *McMullen* "inherently" suggests that "each application within the STT would be programmed to 'identify selected subscriber commands of interest', i.e, when the user issues a command to buy a PPV program the IPPV application would recognize or 'to identify' that command" does not disclose or suggest Assignee's claimed method that includes "programming each application to identify selected subscriber commands of interests." That is, the *McMullen* cite and the Examiner's supporting statement about the background of the *McMullen* invention explicitly describe an IPPV system that operates with a STT to purchase an event (*e.g.*, program content). These descriptions do not "inherently" disclose or otherwise suggest Assignee's method for programming each application to identify selected subscriber commands of interest. *See*, U.S. Patent Application No. 09/496,825, page 12, line 11 – page 14, line 15, and Tables II and III.

And, Examiner Ustaris' assertion that *McMullen* "inherently" suggests that "when storing records within the Event/Viewing statistic Replay an 'application identifier corresponding to a particular application' is used to label the event" fails to suggest or otherwise disclose Assignee's claimed method that includes "determining an application identifier corresponding to a particular application to which a selected command is addressed." That is, *McMullen* cite explicitly discloses a "channel storage location" and other viewing statistics (*e.g.*, sound volume storage location, remote terminal power on/off storage location, etc.). Neither this cite nor the Examiner's "inherent" assertion disclose or otherwise suggest Assignee's method for determining an application identifier corresponding to a particular application to which a selected command is addressed. Id., Tables IV (illustrating exemplary Application Identifiers) and Tables V—VII (illustrating exemplary "particular applications," each particular application having (1) an application ID (Table IV) associated with (2) a selected command (e.g., Table VII, listing 'application state id' for Video On Demand Application), *see also*, page 18, line 1 – page 21, line 10.

Further, Examiner Ustaris' assertion that the combination of *McMullen* and *Kiewit* disclose or suggest "creating an event record that includes the application identifier, the identification code corresponding to the selected command, and a time stamp" is erroneous, and the combination of *McMullen* and *Kiewit* does not disclose or suggest "an identification code corresponding to the selected command." That is, the "identification code corresponding to the selected command" corresponds to the "particular application to which the selected command is addressed." *See* U.S. Patent Application No. 09/496,825, claim 1. Some of the exemplary event records on page 23, lines 6 thru 9 and in Table IX describe Video on Demand Event records 7-9 as illustrated in the partial table below:

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Table IX: Sample Event Records (partial)	
Video on Demand Application Event Records 7-9	Data
Application ID: See Application ID table IV (same for each record)	0x1003
Timestamp: Identifies event time for each event recorded by the application. (The day is the same for each record and each time corresponds with the activity identified below).	1/1/96 8:04:00 p.m. 8:50:00 p.m. 8:55:00 p.m.
Event ID: See table II for event ID codes that identify Mr. Smith's play, pause and play commands	0x0022 0x0024 0x0022
Application State ID Codes: These show Mr. Smith activated this application, played, paused and then played again his selected video.	0x00 0x01 0x00

Id., Table IX.   As discussed above, *McMullen* does not disclose or suggest "an application

identifier corresponding to a particular application to which a selected command is addressed."

And, *Kiewit* does not cure this deficiency.   Rather *Kiewit* merely discloses:

> The home unit 10 is interrogated at periodic intervals, for example, once a
> day, by a central office unit, generally designated by the reference numeral 40
> (FIG. 2), which *compares the signatures from the various home units with
> reference signatures in order to identify the signatures from the home unit.* The
> home units may be periodically interrogated by a data communications circuit 42
> that accesses the various home units via a suitable communications system, for
> example, a plurality of telephone lines 44. The signatures thus collected are
> compared by a central computer system 48 with signatures stored in a data base
> 46. Central computer system 48 controls the collection and classification of the
> signatures received from the home unit as well as the generation of reference
> signatures to be stored in the data base 46. The latter function is performed in
> conjunction with a plurality of reference signal extraction circuits 50 that are
> located in the cities being monitored. The reference signature extraction circuits
> monitor the various networks, cables and other signal sources in those cities, and
> extract reference signals, for example, whenever an Event 2 occurs in any of the
> signals being monitored. The reference signals thus extracted are transmitted to
> the central office unit 40 and stored in the data base 46 along with the times that
> such signatures are extracted, as provided by a clock 52. *The clock 52 of FIG. 2 is
> similar to the clock 32 of the home unit and serves to indicate the time of
> occurrence of the reference signatures. The clock 52 may also be a real time clock
> or a relative time clock that is periodically set by the central office 40. A central
> reference signature extraction circuit 54 and associated clock 56 serve to extract
> signatures and times of extraction of cable originated programs and signatures of
> prerecorded programs. Alternatively, extraction circuits may be placed at the*

head ends of cable system to extract reference signatures of cable programs. The signature extraction performed by the various extraction circuits and data storage is controlled by the central computer system 48.

The home unit of the system according to the invention *monitors the mode of viewing by monitoring the on and off and other functions of the television receiver and any video recorder that may be used in the home.* The various modes of viewing or recording are illustrated in FIG. 3. Mode 1 occurs when both the VCR and television receiver are both off, and indicates that no viewing is taking place. Mode 2 represents television viewing and occurs when the television receiver is on and the VCR is off. Mode 3 represents recording by the home VCR and occurs when the television receiver is off and the VCR is on. Mode 4 occurs when the VCR and the television receiver are both on, and can represent one of three conditions. *The first condition, designated as mode 4.0, represents television viewing through the tuner of the VCR without recording. Mode 4.1 represents VCR recording and television viewing, while the third condition, designated as Mode 4.2, represents VCR playback. Other modes of operation of the VCR, such as fast forward and rewind, are designated as Modes 4.3 and 4.4, respectively. Most of these modes can be easily detected by monitoring power line voltage or voltages elsewhere in the television set and the video recorder. Modes 4.0, 4.3 and 4.4 can be detected by logic circuitry.*

As previously stated, the home unit 10 monitors the viewing mode and the video signal, and extracts signatures from the video signal only if certain events occur. The logic necessary to provide this function is illustrated in FIG. 4. As is apparent from FIG. 4, the mode of operation is recorded whenever there is a change in the mode, such as, for example, a change from viewing to recording, etc. Each time the mode changes, a determination is made in order to determine what the new mode is. This is accomplished by determining whether the television is on or off, whether the VCR is on or off, and whether the VCR is in a record or playback mode. Once it has been determined whether the television and VCR are on or off, and whether the VCR is in a record or playback mode, the mode can readily be determined by using a look-up table containing the information in FIG. 3, and the mode is recorded.

If the mode is determined to be Mode 1, indicating no viewing, no further action is taken until the mode changes again. If it is determined that the mode of operation is either Mode 2 or Mode 4, the system monitors the television receiver for the occurrence of an Event 1, which may, for example, be any one of the following:
1. television turn-on
2. a channel change
3. a predetermined time interval (e.g. 5-10 minutes) since the previous Event 1
4. a sudden scene change to a black scene.
5. loss of synchronization for an appreciable period of time.

U.S. Patent No. 4,697,209, column 5 line 7 – column 6, line 33 (emphasis added by Assignee).

For these reasons and others, *McMullen* and *Kiewit*, then, wholly fails to even remotely recite the claimed subject matter of (1) programming each application to identify selected subscriber commands of interest, (2) determining an application identifier corresponding to a particular application to which a selected command is addressed, and (3) creating an event record including (a) the application identifier, (b) an identification code corresponding to the selected command, and (3) a time stamp. Neither *McMullen* and/or *Kiewit* teaches or suggests what is recited in independent claim 1 or in dependent claims 2-7. Because the combination of *McMullen* and *Kiewit* fails to teach or suggest the claimed features, these claims would not have been obvious to one of ordinary skill in the art. The Assignee, then, respectfully asks Examiner Ustaris to remove the § 103 rejection and to allow the claims 1-7.

Further, in regards to independent claim 1 and dependent claims 2-7, Assignee respectfully asserts that Examiner Ustaris has failed to satisfy MPEP § 2131. The Examiner fails to suggest, identify, or explain how each and every element of independent claim 1 (and, consequently, dependent claims 2-7) is disclosed in *McMullen* and *Kiewit*. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter "M.P.E.P."). Twice, the Examiner asserts that the teachings of *McMullen* "inherently" suggest elements of claim 1. For example, Examiner Ustaris asserts that "[i]nherently, when storing records within the Event/Viewing statistic Reply an 'application identifier corresponding to a particular application' is used to label the event, i.e. IPPV purchase or viewing channel (See FIG. 16, View Channel A-D and column 5, lines 49-60" Office Action, page 3. However, as previously discussed, neither FIG. 16 nor column 5, lines 49-60 of *McMullen* remotely suggest or disclose "determining an application identifier corresponding to a particular application to which a selected command is addressed." *See*, U.S. Patent Application No. 09/496,825, Tables IV (illustrating exemplary Application Identifiers) and Tables V—VII (illustrating exemplary "particular applications," each particular application having (1) an application ID (Table IV) associated with (2) a selected command (e.g., Table VII, listing 'application state id' for Video On Demand Application), *see also*, page 18, line 1 – page 21, line 10 and Table IX. This rejection, then, is improper and must be withdrawn. *See also*,

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MPEP § 706.02(b). Furthermore, maintaining this rejection is a violation of due process. If the Office wishes to factually support this rejection, then another office action is required. This other office action must follow the requirements of MPEP § 2131. Further, this other office action also cannot maintain the rejection — this other office action may ONLY properly present the reasons for the rejection. Further, once the Office properly follows MPEP § 2131 and properly supports a rejection, the Assignee must be given another opportunity to rebut the rejection. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.

Regarding claim 8, Examiner Ustaris states:

> Claim 8 contains the limitations of claim 1 and 5 and is analyzed as previously with respect to hose claims. Furthermore, each STT has four collection slots used to record the channels being viewed or also known as "event records" at different times, wherein inherently the four collection slots makes up an 'event timeline describing a subscriber's selection of distributed programming for a discrete time period' when the system manager receives information from all collection slots (See McMullen column 24 lines 18-61 and column 27 lines 30-46). However, McMullen does not disclose that the 'event records are merged with the 'programming data.'
> Kiewit also discloses a system where the home unit or STT would also collect signatures from the programs being viewed by the subscribers or also know[n] as an 'event record.' The signature is sent to the central office or system manager where it compares the signature with reference signatures or 'programming data' extracted from cable programs at the head ends or other sources or 'merging the event records with programming data.' (See Kiewit column 5, liens 5-45). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify system manager disclosed by McMullen to compare or 'merge' event records with 'programming data', as taught by Kiewit, in order to provide a more detailed and accurate record of what programs the subscriber viewed that was distributed by the cable television distribution system.

Office Action, pp. 5-6.

In regards to the Examiner's statement that "*each STT has four collection slots used to record the channels being viewed or also known as 'event records'*," this statement directly conflicts with the Examiner's earlier assertion of what *McMullen* discloses as an "event record" in regards to claim 1 – that is, earlier the Examiner asserts that '*[t]he STT includes non-volatile memory (NVM) were it stores an Event/Viewing Statistic Reply that contains event records of the STT or 'creating an event record', i.e. channels which were tuned by the STT and IPPV purchase*

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of the subscriber. . . ." Further, the cited reference of *McMullen* does not disclose or suggest that the *plurality of event records are collected to describe "selected commands from a subscriber to a particular set top box."* See <u>U.S. Patent Application No. 09/496,825</u>, claim 8 (emphasis added by Assignee).

Rather, *McMullen* discloses:

Referring to the diagram in FIG. 13, the various storage locations located within each STT are shown. Each STT possesses a plurality of collection slots which consist of a record time storage location RTSL, a channel storage location CSL (the viewing statistics storage location), and a time code storage location TCSL. For example, in a present implementation, the system manager generates a global transaction which defines four record times at which an RF-IPPV module should record the channel to which its set-top terminal is tuned. The record times are stored in record time storage locations RTSL.sub.1 through RTSL.sub.4 at each set top terminal, which are preferably composed of nonvolatile memory locations (NVM 503 in FIG. 4), but may also be random access memory locations. These record times may be within any convenient time period such as a day, a week, a bi-week, and the like.

For illustrative purposes, it will be assumed that the system manager instructs the RF-IPPV module to record the tuned set-top terminal channel on Sunday at 7:00 PM, Tuesday at 9:00 PM, Thursday at 8:00 PM, and Thursday at 10:00 PM in a one week time period. As explained above, these four record times are stored in four record time storage locations (RTSL.sub.1 through RTSL.sub.4), located in non-volatile memory NVM 503 in a preferred embodiment. A real time clock derived from a 4 MHz crystal clock (501 in FIG. 4) maintains the current real time for each RF-IPPV module. In order to maintain precision and uniformity, this clock may be updated periodically by the system manager through a downstream transaction.

Microprocessor 504 periodically performs a comparison between the various record times stored in NVM 503 and the value of the real time clock, and when a match occurs, the RF-IPPV module records in a channel storage location CSL corresponding to the record time the channel then being tuned by the set-top. Referring to FIG. 4, the channel storage location is located within memory 503, and is stored under control of microprocessor 504. Microprocessor obtains the current channel being viewed through data bus 490 from the set-top terminal microprocessor 400 (FIG. 3). Microprocessor 400 obtains the current channel being viewed from NVM 470.

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For example, referring to FIG. 14, suppose record times RT.sub.1, RT.sub.2, RT.sub.3, and RT.sub.4 correspond to 7:10, 7:25, 7:35, and 7:50

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respectively, times which all fall within the same one hour period (7:00 to 8:00). When the record time equals the real time clock at each STT, the channel currently being viewed is stored in a channel storage location and the current time, in hour increments, is stored in a time code storage location. In this example, the contents of the time code storage location would correspond to the 7:00 to 8:00 hour period. When each STT subsequently returns the contents of these locations to the system manager, the system manager would then determine that the returned information relates to the record times falling within the 7:00 to 8:00 period as opposed to previous record times programmed in earlier programming/collecting cycles.

U.S. Patent No. 5,251,324, column 24 lines 18-61 and column 27 lines 30-46. Therefore, the alleged "event records" disclosed in *McMullen* are limited to a record time storage location RTSL, a channel storage location CSL, and a time stamp storage location TCSL.

Further, *Kiewit* does not disclose nor suggest that the "event records are merged with programming data." Rather, *Kiewit* provides:

> The home unit 10 is interrogated at periodic intervals, for example, once a day, by a central office unit, generally designated by the reference numeral 40 (FIG. 2), which *compares the signatures from the various home units with reference signatures in order to identify the signatures from the home unit.* The home units may be periodically interrogated by a data communications circuit 42 that accesses the various home units via a suitable communications system, for example, a plurality of telephone lines 44. The signatures thus collected are compared by a central computer system 48 with signatures stored in a data base 46. Central computer system 48 controls the collection and classification of the signatures received from the home unit as well as the generation of reference signatures to be stored in the data base 46. The latter function is performed in conjunction with a plurality of reference signal extraction circuits 50 that are located in the cities being monitored. The reference signature extraction circuits monitor the various networks, cables and other signal sources in those cities, and extract reference signals, for example, whenever an Event 2 occurs in any of the signals being monitored. The reference signals thus extracted are transmitted to the central office unit 40 and stored in the data base 46 along with the times that such signatures are extracted, as provided by a clock 52. *The clock 52 of FIG. 2 is similar to the clock 32 of the home unit and serves to indicate the time of occurrence of the reference signatures. The clock 52 may also be a real time clock or a relative time clock that is periodically set by the central office 40. A central reference signature extraction circuit 54 and associated clock 56 serve to extract signatures and times of extraction of cable originated programs and signatures of prerecorded programs. Alternatively, extraction circuits may be placed at the head ends of cable system to extract reference signatures of cable programs.* The signature extraction performed by the various extraction circuits and data storage is controlled by the central computer system 48.

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U.S. Patent No. 4,697,209, column 5 lines 7-45 (emphasis added by Assignee). Consequently, the "reference signature" taught by Kiewit is not "programming data." Rather, the "reference signature" disclosed by Kiewit is a signature used "to identify the signatures from the home units" or alternate signals from network components, such as, "the head ends of cable system to extract reference signatures of cable programs." However, the reference signature of Kiewit does not disclose or suggest the merge processor forming "an event timeline describing a subscriber's selection of distributed programming for a discrete time period by merging the event records with programming data describing programming available via the media delivery system" See U.S. Patent Application 09/496,825, claim 8.

For these reasons and others, such as those cited for claim 8 above, *McMullen* and *Kiewit*, then, wholly fails to even remotely recite the claimed subject matter of (1) merge processor coupled via means for communication to (2) a plurality of set top boxes, each comprising a processor for (a) collecting a plurality of event records that describe selected commands from a subscriber to a particular set top box and (b) transmitting event records to the merge processor, c) wherein the merge processor forms an event timeline describing a subscriber's selection of distributed programming for a discrete time period by merging the event records with programming data describing programming available via the media delivery system. Neither *McMullen* and/or *Kiewit* teaches or suggests what is recited in independent claim 8 or in dependent claims 9-15. Because the combination of *McMullen* and *Kiewit* fails to teach or suggest the claimed features, these claims would not have been obvious to one of ordinary skill in the art. The Assignee, then, respectfully asks Examiner Ustaris to remove the §103 rejection and to allow the claims 9-15.

Regarding claim 16, Examiner Ustaris asserts that "[c]laim 16 contains the limitations of claims 1 and 8 (wherein the event records are also known as 'journaling information') and is analyzed as previously discussed with respect to those claims." Office Action, page 8. However, the combination of *McMullan* and/or *Kiewit* do not disclose nor do they suggest the claim elements of claim 16. Claim 16 is provided below:

[c16] (Original)   A method for journaling information about subscriber use of a media delivery network for delivering programming and a merge processor for analyzing the resulting journaled information, the method comprising the steps of:

a) *collecting information about a plurality of subscribers' use of a media delivery network, the collecting step comprising:*

i) *identifying commands of interest from each subscriber;*

ii) *forming event records that record at least the commands of interest and a time associated with the command;*

b) *transmitting event records to the merge processor;*

c) *merging the event records with data describing the programming delivered over the media network in order to form event timelines of which describes the programming selected by a particular subscriber over a discrete time period.*

U.S. Patent Application No. 09/496,825, claim 16 (emphasis added by Assignee). For reasons described above in regards to claims 1 and 8, Assignee respectfully submits that the combination of *McMullen* and *Kiewit*, then, wholly fails to teach or suggest the claimed features of independent claim 16 or the claimed features of dependent claims 17-19, and these claims would not have been obvious to one of ordinary skill in the art. The Assignee, then, respectfully asks Examiner Ustaris to remove the §103 rejection and to allow the claims 16-19.

Further, in regards to independent claim 16 and dependent claims 17-19, Assignee respectfully asserts that Examiner Ustaris has failed to satisfy MPEP § 2131. The Examiner fails to suggest, identify, or explain how each and every element of independent claim 16 (and, consequently, dependent claims 17-19) is disclosed in *McMullen* and *Kiewit. See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter "M.P.E.P."). The Examiner incorrectly equates claim 16 with claims 1 and 8 with a mere reference that "the event records are also known as 'journaling information.' " This rejection, then, is improper and must be withdrawn.

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See also, MPEP § 706.02(b). Furthermore, maintaining this rejection is a violation of due process. If the Office wishes to factually support this rejection, then another office action is required. This other office action must follow the requirements of MPEP § 2131. Further, this other office action also cannot maintain the rejection — this other office action may ONLY properly present the reasons for the rejection. Further, once the Office properly follows MPEP § 2131 and properly supports a rejection, the Assignee must be given another opportunity to rebut the rejection. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.

In regards to independent claim 20, the Examiner asserts that "[c]laim 20 contains the limitations of claim 15 and 16 (wherein each STT also serves the function as the "collector" and the each STT can store demographics information (See McMullen column 25 lines 55-66)) and is analyzed as previously discussed with respect to those claims." Office Action, page 8. However, the combination of *McMullan* and/or *Kiewit* do not disclose nor do they suggest the claim elements of claim 20. Claim 20 is provided again below:

> **[c20] (Original)**   A system for determining the viewing habits of subscribers to a media delivery network for delivering programming, the system comprising:
>
> *a) a collector for collecting event records describing subscribers' selection and use of programming;*
>
> *b) means, coupled to the collector, for communicating event records to*
>
> *c) a merge processor for processing the event records to form a selected subscriber an event timeline describing the programming delivered to a selected subscriber over a particular time period via the media delivery network;*
>
> *d) means for storing demographics information about selected groups of subscribers; and*
>
> *e) wherein the merge processor forms a plurality of event timelines and correlates the demographics information with the event timelines.*

U.S. Patent Application No. 09/496,825, claim 20 (emphasis added by Assignee).

For reasons described above in regards to claims 1 and 8, Assignee respectfully submits that the combination of *McMullen* and *Kiewit*, then, wholly fails to teach or suggest the claimed features of independent claim 20 or the claimed features of dependent claims 21-23, and these claims would not have been obvious to one of ordinary skill in the art. The Assignee, then, respectfully asks Examiner Ustaris to remove the §103 rejection and to allow the claims 20-23.

Further, in regards to independent claim 16 and dependent claims 17-19, Assignee respectfully asserts that Examiner Ustaris has again failed to satisfy MPEP § 2131. The Examiner fails to suggest, identify, or explain how each and every element of independent claim 16 (and, consequently, dependent claims 17-19) is disclosed in *McMullen* and *Kiewit*. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter "M.P.E.P."). The Examiner incorrectly equates claim 20 with dependent claim 15 (claim 15 is dependent upon claim 8) and independent claim 16 with a mere reference that "each STT also serves the function as the 'collector' and the each STT can store demographics information (See McMullan column 25 lines 55-66 [stating that [v]iewer profile data may include data such as the identity of the viewer watching a television program, the age of this viewer and the sex of this viewer.]) and is analyzed as previously discussed with respect to those claims." This rejection, then, is improper and must be withdrawn. *See also*, MPEP § 706.02(b). Furthermore, maintaining this rejection is a violation of due process. If the Office wishes to factually support this rejection, then another office action is required. This other office action must follow the requirements of MPEP § 2131. Further, this other office action also cannot maintain the rejection — this other office action may ONLY properly present the reasons for the rejection. Further, once the Office properly follows MPEP § 2131 and properly supports a rejection, the Assignee must be given another opportunity to rebut the rejection. ANY OTHER ACTION IS A VIOLATION OF DUE PROCESS.

In regards the Examiner's rejection of dependent claims 18, 19, and 21-23, these rejections are moot in view of the above reasons and others. In conclusion, the Assignee respectfully submits that all of the Examiner's rejections and objection have been overcome.

Further, none of the references cited by the Examiner, alone or in combination, disclose or suggest the claimed invention. Therefore, Assignee respectfully solicits a Notice of Allowance for all pending claims (claims 1-24).

AUTHORIZATION FOR PAYMENT OF FEES & REQUEST FOR AN EXTENSION OF TIME

The total number of claims is now 24. The Assignee includes $250 for new claim 24 -- $200 for the excess inpendent claim and $50 for the excess claim of twenty.

Assignee respectfully requests an additional three month extension of time fee for the Response to the July 8, 2004 Office Action Filed on January 7, 2005. Assignee submits payment for a three month extension of time to respond to the July 8, 2004 Office Action from October 8, 2004 to the three month extension of January 8, 2005.

Description of Fee	Amount
Excess independent claim over three	$200.00
Excess claim over twenty	$50.00
Three Month Extension of Time Fee	$1,020.00
Total	**$1,270.00**

The Assignee, therefore, includes a Credit Card Payment Form PTO-2038 for $1,270.00. If there are any other fees due in connection with the filing of this response, please charge the fees to the credit card on file. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to the credit card on file.

If the Office has any questions, the Office is invited to contact the undersigned at (757) 253-5729 or bambi@wzpatents.com.

Respectfully submitted,

[signature]

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